

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALVADOR MARTINEZ-SALCEDO,

Defendant.

NO. CR-05-2050-EFS

**ORDER DENYING MOTION TO  
DISMISS CASE, GRANTING MOTION  
FOR DISCOVERY, AND DENYING AS  
MOOT MOTION TO COMPEL GRAND  
JURY TRANSCRIPTS AND MOTION  
FOR DISCLOSURE OF EVIDENCE  
PURSUANT TO FEDERAL RULES OF  
EVIDENCE 404 AND 609.**

A Pretrial Conference was held in the above-captioned matter on July 19, 2005. Defendant Salvador Martinez-Salcedo was present, represented by Kurt M. Rowland. Assistant United States Attorney Robert Ellis appeared on behalf of the United States. Defendant originally raised a collateral attack on his previous deportation order; however, in Court he argued the Government was precluded from using evidence of an allegedly invalid deportation to demonstrate that he left the country, a necessary element under 8 U.S.C. § 1326. Herein, the Court addresses both arguments. After considering all submitted briefs, oral argument and relevant law, the Court, for the reasons given on the record and supplemented herein, **denies** the Motion to Dismiss.

1 **A. Collateral Attack**

2 In the domain of illegal re-entry cases, the Ninth Circuit held  
3 Congress did not intend to "require a separate official or formal act of  
4 deportation to precede each repeated violation of [8 U.S.C.] § 1326."  
5 *United States v. Meza-Villareello*, 602 F.2d 209, 211 (9th Cir. 1979).  
6 However, the Ninth Circuit in *Meza-Villareello* stated "the government  
7 should be required to prove that the defendant had been outside the  
8 United States after each conviction before again prosecuting him for  
9 being 'found' within the United States in violation of 8 U.S.C. § 1326."  
10 *Id.* Defendant was charged on October 17, 2000, with illegal re-entry in  
11 violation of 8 U.S.C. § 1326 due to a previous deportation occurring on  
12 April 7, 2000. Mr. Martinez Salcedo pled guilty to this charge and was  
13 sentenced to 46 months. Subsequent to this chain of events, Defendant  
14 was also deported on February 14, 2004. This deportation came through  
15 an administrative order reinstating the 2000 sentence. In the present  
16 case, Defendant was charged on May 17, 2005, with re-entering the country  
17 illegally after his 2000 conviction.

18 Defendant contends his February 14, 2004, deportation pursuant to  
19 an administrative order was invalid and therefore the Government cannot  
20 rely upon the previous order to prove Defendant was outside the country  
21 after the 2000 conviction. A defendant who can establish a defective  
22 prior deportation proceeding, in that the defendant never had proper  
23 judicial review, may stage a collateral challenge to the use of a prior  
24 order of removal as an element of a subsequent criminal re-entry charge.  
25 *United States v. Mendoza-Lopez*, 481 U.S. 828, 837-839 (1987). The Ninth  
26 Circuit held "an immigration judge must conduct all proceedings for

1 deciding the inadmissability or deportability of an alien." *Morales-*  
2 *Izquierdo v. Ashcroft*, 388 F.3d 1299, 1305 (9th Cir. 2004). Thus, a  
3 deportation proceeding held without an immigration judge may amount to  
4 a defective prior deportation proceeding. *Id.* Defendant's reinstatement  
5 proceeding in 2004 was not held before an immigration judge. Thus, the  
6 Court finds the officers who executed the order were acting *ultra vires*.  
7 *Id.*

8 However, "a defendant who seeks to exclude evidence of a deportation  
9 order in a prosecution under 8 U.S.C. § 1326 must do more than  
10 demonstrate deprivation of the right to a direct appeal from that order.  
11 The defendant also bears the burden of proving prejudice." *United States*  
12 *v. Proa-Tovar*, 975 F.2d 592, 595 (9th Cir. 1992) (*en banc*). Defendant  
13 asserts no authority to demonstrate that the lack of an immigration judge  
14 *per se* prejudiced him. In addition, Defendant fails to prove prejudice  
15 because he had waived his ability to attack the 2000 deportation order  
16 - which was simply reinstated in 2004 - by signing a concession of  
17 deportation<sup>1</sup>. Further, as discussed in more detail below, the Government  
18 may rely upon statements made by Defendant following his 2005 arrest to  
19 prove Defendant is in the United States subsequent to being outside the  
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21 <sup>1</sup>Defendant agreed and stipulated "to an order of Reinstatement of  
22 the Order and Removal and further [agreed] to waive [his] right to  
23 protest such order." Eastern District of Washington Case No. CR-00-2160-  
24 EFS, (Ct. Rec. 16). Further, Defendant waived his "right to appeal or  
25 to reopen or challenge [in] any way the Order of Reinstatement of the  
26 prior Order of Removal." *Id.*

1 country. Accordingly, the Court finds Defendant is unable to  
2 collaterally attack the prior proceeding.<sup>2</sup>

3 **B. Exclusionary Rule**

4 The Court finds the exclusionary rule does not prevent the  
5 Government from relying on statements made by Defendant. The  
6 exclusionary rule has been expressly limited in the past when it will not  
7 serve either a deterrent value or attempts to punish officers acting  
8 under reasonable reliance. *United States v. Leon*, 104 S. Ct. 3405, 3407  
9 (1984); *Ariz. v. Evans*, 115 S. Ct. 1185, 1187 (1995). Thus, even if the  
10 holding of *Morales-Izquierdo* creates a due process violation, which  
11 thereby taints the arrest warrant issued May 10, 2005, for a re-entry  
12 violation, the arresting officer relied on the warrant in good faith, as  
13 did the interrogating officer, Agent Nino. Defendant did not provide any  
14 evidence demonstrating the officers acted in bad faith. Accordingly, the  
15 good faith reliance by the officers on the warrant ultimately led to  
16 Defendant's self-incriminating statements made after Defendant was  
17 advised of his *Miranda* rights. Neither party disputes Defendant informed  
18 Agent Nino on May 11, 2005, that he was outside of the country subsequent  
19 to his 2000 conviction. The Court therefore finds Defendant failed to  
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21  
22 <sup>2</sup>Further, the Government in the instant case need not rely on an  
23 ultimately invalid administrative order. The document is advanced only  
24 to demonstrate Defendant is in the United States after leaving the  
25 country. The administrative order is not an element of the instant  
26 offense and thereby does not run afoul of *Mendoza-Lopez*. *Id.* at 840.

1 prove the exclusionary rule applies to Defendant's self-incriminating  
2 statements.

3 Accordingly, **IT IS HEREBY ORDERED:**

- 4 1. Defendant's Motion to Dismiss Case, (**Ct. Rec. 22**), is **DENIED**.  
5 2. Defendant's Motion for Discovery, (**Ct. Rec. 19**), is **GRANTED**.  
6 3. Defendant's Motion to Compel Grand Jury Transcripts, (**Ct. Rec.**  
7 **15**), and Defendant's Motion for Disclosure of Evidence Pursuant to  
8 Federal Rules of Evidence 404 and 609, (**Ct. Rec. 17**), are **DENIED AS MOOT**.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
10 this order and to provide copies to all counsel.

11 **DATED** this 1<sup>st</sup> day of August, 2005.

12  
13 S/ Edward F. Shea  
14 EDWARD F. SHEA  
United States District Judge

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